

BEFORE THE
STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Motor Vehicle
Dealer License of Capitol Corvette

Case Nos. 96-H-986
96-H-993

FINAL DECISION

On July 11, 1996, the Department of Transportation filed a complaint (Docket no. 96-H-986) with the Division of Hearings and Appeals alleging that Capitol Corvette violated a Special Order issued on February 22, 1996, and requesting that the Respondent's motor vehicle dealer license be revoked. On September 17, 1996, the Department of Transportation filed a complaint (Docket no. 96-H-993) with the Division of Hearings and Appeals alleging that Capitol Corvette has failed to maintain a \$25,000 surety bond or letter of credit as required by sec. 218 01(2)(bb), Stats.

Pursuant to due notice a combined hearing was conducted on November 8, 1996, in Madison, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presided.

In accordance with secs 227.47 and 227.53(1)(c), Stats., the parties are certified as follows:

Wisconsin Department of Transportation, complainant, by

Attorney Charles M. Kernats
Office of General Counsel
PO Box 7910
Madison, WI 53707-7910

Capitol Corvette, respondent,

no appearance

The Administrative Law Judge issued a proposed decision on November 20, 1996. David Larson filed comments objecting to the proposed decision on November 26, 1996, and the Department of Transportation filed a response to Mr. Larson's objections on November 29, 1996. Mr. Larson primarily objects to findings of fact numbers 3, 4, and 5. These findings describe three transactions in which Mr. Larson failed to pay monies owed to consignors. In support for his objections, Mr. Larson offers factual information which was not presented at the hearing in this matter.

Mr. Larson was provided notice of the hearing. Neither he nor any one on his behalf appeared at the hearing. Nor did Mr. Larson show good cause for his failure to appear. The findings in the proposed decision are supported by the evidence admitted at the hearing. Evidence or other information which was not presented at the hearing can not be considered as a basis for modifying the proposed decision. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. David C. Larson d/b/a Capitol Corvette (Capitol Corvette) is a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin. Capitol Corvette holds a motor vehicle dealer license issued by the Department of Transportation (Department).
2. On February 22, 1996, the Division of Hearings and Appeals issued Special Order 96-H-954 to Capitol Corvette. Paragraph 1(e) of the Special Order enjoined Capitol Corvette from "[f]ailing to promptly pay monies owed for the sale of a consigned vehicle to the consignor in violation of s. 218.01(3)(a)1, Wis. Stats."
3. Robert L. Briggs entered into a consignment agreement with Capitol Corvette to sell a 1995 Chevrolet Corvette, VIN 1G1YY22P6S5118666 (exhibit 4). Capitol Corvette did sell this vehicle to a Rodney F. Riley for the sum of \$27,000 as evidenced by a used motor vehicle purchase contract (exhibit 5). Capitol Corvette issued check number 4354 in the amount of \$27,000 as payment under the consignment agreement. A copy of this check was admitted to the record (exhibit 6). The check is stamped "Stop Payment." Title to the subject vehicle has been transferred to Rodney Riley. Robert Briggs has not been paid for the vehicle.
4. On October 14, 1995, Holly A. and Herschel J. Porter entered into a consignment agreement with Capitol Corvette to sell a 1993 Chevrolet Corvette, VIN 1G1YY23POP5108317 (exhibit 8). On May 15, 1996, Capitol Corvette sold this vehicle to Jason Riggs for \$25,000 as evidenced by a used motor vehicle purchase contract (exhibit 9). Capitol Corvette issued check number 4320 to Herschel and Holly Porter in the amount of \$5,416.80. This constitutes a partial payment to the Porters. The Porters are still owed \$19,583.20 on the consignment sale of the subject vehicle. The title to the subject vehicle remains in the names of the Porters. Presumably, the \$25,000 paid by Jason Riggs for the subject vehicle has not been returned to him.
5. On May 7, 1996, Cynthia M. Shaw entered into a consignment agreement with Capitol Corvette to sell a 1978 Chevrolet Corvette, VIN 1287L8S436869 (exhibit 12). On June 3, 1996, Capitol Corvette sold the subject vehicle to Bruce W. Bjorge for \$7,990 as evidenced by a used motor vehicle purchase contract (exhibit 13). As payment for the subject vehicle, Capitol Corvette issued a check to Cynthia Shaw and her husband, Robert Shaw. In the space for the numerical amount of the check the figure "\$9,000.00" was entered. In the space where the amount of the check is written alphabetically "Nine and no/100 dollars" was entered.

Because the two amounts on the check do not match, the check is uncashable. The Shaws did not receive payment for the vehicle from Capitol Corvette. The Shaws filed a theft claim with

their insurance carrier which was paid. The subject vehicle is now titled in the name of the insurance company. Presumably, the money paid by Bruce Bjorge for the subject vehicle to Capitol Corvette has not been returned to him.

6. Motor vehicle dealers are required by sec. 218.01(2)(bb), Stats., to maintain a \$25,000 surety bond or letter of credit as a condition of obtaining and maintaining a motor vehicle dealer license.
7. The Hartford Casualty Insurance Company issued a Notice of Cancellation dated July 8, 1996. The Notice of Cancellation informed the Department that, effective September 14, 1996, it canceled the bond for Capitol Corvette.
8. Capitol Corvette has not provided evidence of a replacement surety bond or irrevocable letter of credit to the Department.

Conclusions of Law

The Administrator concludes:

1. The failure of Capitol Corvette to pay Robert L. Briggs the money owed him pursuant to the consignment agreement for the 1995 Chevrolet Corvette, VIN 1G1YY22P6S5118666, constitutes a violation of paragraph 1(e) of the Special Order issued to Capitol Corvette. Pursuant to sec. 218.01(3)(a)31, Stats., violation of a provision of a Special Order constitutes grounds for suspension or revocation of the motor vehicle dealer license of Capitol Corvette.
2. The failure of Capitol Corvette to pay Holly A. and Herschel J. Porter the entire amount owed to them pursuant to the consignment agreement for the 1993 Chevrolet Corvette, VIN 1G1YY23POP5108317, constitutes a violation of paragraph 1(e) of the Special Order issued to Capitol Corvette. Pursuant to sec. 218.01(3)(a)31, Stats., violation of a provision of a Special Order constitutes grounds for suspension or revocation of the motor vehicle dealer license of Capitol Corvette.
3. The failure of Capitol Corvette to pay Cynthia M. Shaw the money owed her pursuant to the consignment agreement for the 1978 Chevrolet Corvette, VIN 1287L8S436869, constitutes a violation of paragraph 1(e) of the Special Order issued to Capitol Corvette. Pursuant to sec. 218.01(3)(a)31, Stats., violation of a provision of a Special Order constitutes grounds for suspension or revocation of the motor vehicle dealer license of Capitol Corvette.
4. Pursuant to sec. 218.01(3)(a)7, Stats., failure to maintain the surety bond or letter of credit required by sec. 218.01(2)(bb), Stats., is grounds for the suspension of the license of a motor vehicle dealer license.

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5. Pursuant to secs. 218.01(3)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

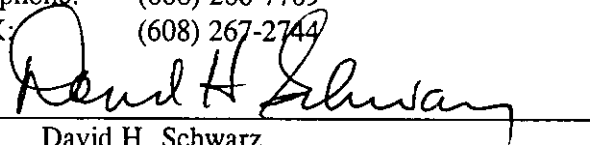
The Administrator orders:

The motor vehicle dealer license of David C. Larson d/b/a Capitol Corvette is revoked. This order shall be effective ten days from the date of the final order in this matter.

Dated at Madison, Wisconsin on December 9, 1996.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By



David H. Schwarz
Administrator

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